

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.2116 of 2004

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23.12.2005

Between:

Andhra Bank, Special Housing Finance Branch
(formerly Andhra Bank Homes Finance Limited),

Vijayawada represented by the Manager

... Petitioner

AND

The Commissioner of Police-cum-Competent Authority,

Governorpet, Vijayawada

and another

...Respondents

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ORDER:

Andhra Bank (Special Housing Finance Branch), Vijayawada is the petitioner. It seeks a writ of Mandamus declaring the action of the Commissioner of Police, the first respondent herein, in directing the tenants of the principal borrowers of the petitioner's Bank, not to pay the monthly rents to the credit of the housing loan account No.99/61, as illegal and arbitrary. A consequential direction to respondents 1 and 2 is sought to revoke the said direction to enable the tenants to pay the rent in the bank account towards discharge of the loan.

The fact of the matter is not in dispute. One Ch.Narasimha Rao and his wife, Krishna Kumari, (hereafter collectively called, borrower) availed a loan of Rs.12,00,000/- (Rupees Twelve lakhs only) for construction of a commercial complex in Vijayawada. After obtaining loan in August 1999, the borrower completed the construction and let out to Kanaka Durga Grameena Bank (hereafter called, Grameena Bank) and New India Assurance Company (hereafter called, Insurance Company). It appears, the borrower also commenced chit fund business and committed default in paying the amounts to chit subscribers. Therefore, action was

initiated against the borrower under A.P. Protection of Depositors of Financial Establishments Act, 1999 (the Act, for brevity). The Government appears to have issued an order attaching the property of the borrower, which is under the tenancy of Grameena Bank and Insurance Company. Therefore, the first respondent, who is controlling authority under the Act issued a direction to the tenants not to pay the rents to the petitioner Bank towards discharge of the amount borrowed by the borrower and further directed that the amount to be kept in a separate account.

The second respondent has filed a counter affidavit. It is stated that the borrower had three financial establishments, namely, Chanumolu Finance, Sridevi Finance Corporation and Rao Auto Finance. As Chairman of said group of companies, Ch.Narasimha Rao collected lakhs of rupees from several depositors and failed to pay the amounts to them. It is also alleged that Narasimha Rao acquired several immovable properties with the amounts collected from the depositors. A large number of complaints were made, based on which, crime Nos.296/2000, 77/2001, 112/2001, 113/2001, 200/2001 and 232/2001 under Sections 420, 406, 120-B of Indian Penal Code, 1860 (IPC) and Section 5 of the Act were registered against the borrower. Further, to safeguard the interest of the depositors, the first respondent seized the properties and on a report submitted by the first respondent, Government of Andhra Pradesh passed orders under Section 3 of the Act attaching the properties.

The building, which was attached by the Government, was in possession of Grameena Bank and Insurance Company. After attachment, the borrower filed Crl.M.P.No.378 of 2002 on the file of the Special Court established under the Act, namely, the Court of Metropolitan Sessions Judge, Vijayawada. The first respondent also filed Crl.M.P.No.549 of 2002 before the said Court. The Special Court passed orders on 24.6.2002 making attachment orders absolute and partly allowed the Crl.M.P. filed by the borrower, directing the first respondent to handover the residential house and one Ceilo car to Narasimha Rao and his wife. Aggrieved by the same, the borrower filed Criminal Appeal No.837 of 2002. The first respondent also filed Criminal Appeal No.998 of 2002. This Court affirmed the orders passed by the Special Court. Thereafter the first respondent also filed an application before the Special Court seeking permission for auctioning the attached properties with a view to distribute the sale proceeds to the depositors and the application is still pending. The first respondent also issued a notice on 19.7.2001 to Grameena Bank and Insurance Company advising them to deposit the rents in a separate account till further orders.

Learned Counsel for the petitioner submits that the debt of the petitioner Bank has priority over all other liabilities of the borrower by reason of the mortgage created in favour of the Bank and therefore, it is illegal on the part of the first respondent to advise the tenants to deposit the rents in a separate account. **Per contra**, the learned Government Pleader for Home relies on Sections 3 and 4 of the Act and the relevant notification issued by the Government under Section 4(1) of the Act in support of the submission that the first respondent being the controlling authority, has right to manage the properties attached by the Government of Andhra Pradesh under Section 3 of the Act.

There is no dispute that action has been initiated in accordance with law against the borrower, who also is alleged to have contravened the provisions of the Act. When a financial establishment defaults in return of the deposit, every person responsible for the management of the affairs shall be liable for punishment, which may extend to ten (10) years. Criminal cases have already been registered against Narasimha Rao and his wife, and investigation is pending. Pending such investigation, the Government issued ad interim order under Section 3 of the Act attaching the properties of the borrower. This order was also made absolute by the Special Court under Section 7 of the Act. Be that as it is, under Section 4(1) of the Act, the Government is required to appoint the competent authority to exercise control over the property attached by the Government under Section 3 of the Act. In exercise of such power, the Government issued notification vide G.O.Ms.No.349 dated 29.10.1999 appointing District Magistrates in all the Districts and Commissioners of Police of Hyderabad, Visakhapatnam and Vijayawada in respect of the cities Hyderabad, Visakhapatnam and Vijayawada as competent authorities to exercise control over the properties attached by the Government under Section 3 of the Act. As per sub section (2) of Section 4 of the Act, every competent authority shall have all powers to discharge the functions as may be prescribed.

A.P. Protection of Depositors of Financial Establishments Rules, 1999 (the Rules, for brevity) prescribe the powers and functions of the competent authority. Rule 6(1) of the Rules confers the power on the competent authority to make an order either seizing the property or prohibiting transfer of the property. Sub section (4) of Section 6 of the Rules requires the competent authority to maintain a record of income received. Reading Section 4(2) of the Act with Rule 6 of the Rules, it must be held that it is within the purview of the powers of the competent authority to direct the deposit of rents in a separate account, as and when the properties of accused under Act are attached and seized. In this case, that was precisely what was done. Further, the attachment order of the Government was made absolute and if the petitioner has any grievance, he has to approach the Special Court-cum-the Court of Metropolitan Sessions Judge, Vijayawada for redressal. In this writ petition, the petitioner is not entitled to any relief.

The writ petition is devoid of any merit and is, accordingly, dismissed. No costs.

(V.V.S.RAO, J)

December 23, 2005.

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